

§211.45

49 CFR Ch. II (10–1–12 Edition)

Each petition shall be processed in accordance with §211.59.

§211.45 Petitions for emergency waiver of safety rules.

(a) *General.* This section applies only to petitions for waiver of a safety rule, regulation, or standard that FRA determines are directly related to the occurrence of, or imminent threat of, an emergency event or an emergency situation. For purposes of this section, the terms “emergency event” and “emergency situation” mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.

(b) *Emergency Relief Docket.* Each calendar year FRA creates an Emergency Relief Docket (ERD) in the publicly accessible Federal eRulemaking Portal (FeP). The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket’s Web site at <http://www.regulations.gov>. All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590 during regular business hours (9 a.m.–5 p.m.). By January 31st of each year, FRA publishes a notice in the FEDERAL REGISTER identifying by docket number the ERD for that year. A notice will also be placed in the previous year’s ERD identifying the new docket number.

(c) *Determining the existence of an emergency event or an emergency situation.* If the Administrator determines that an emergency event or an emergency situation identified in paragraph (a) of this section has occurred, or that an imminent threat of it occurring exists, and determines that public safety or recovery efforts require that the provisions of this section be implemented, the Administrator will activate the Emergency Relief Docket identified in paragraph (b) of this sec-

tion. In determining whether an emergency exists, the Administrator may consider declarations of emergency made by local, State, or Federal officials, and determinations by the Federal government that a credible threat of a terrorist attack exists.

(d) *Notification.* When possible, FRA will post the FRA Administrator’s determination described in paragraph (c) of this section on its Web site at <http://www.fra.dot.gov>. FRA will also place the FRA Administrator’s determination in the ERD as soon as practicable.

(e) *Content of petitions for emergency waivers.* Petitions submitted to FRA pursuant to this section should specifically address how the petition is related to the emergency, and to the extent practicable, contain the information required under §211.9(a) and (b). The petition should at a minimum describe the following: how the petitioner or public is affected by the emergency (including the impact on railroad operations); what FRA regulations are implicated by the emergency (e.g., movement of defective equipment); how waiver of the implicated regulations would benefit petitioner during the emergency; and how long the petitioner expects to be affected by the emergency.

(f) *Filing requirements.* Petitions filed under this section, shall be submitted using any of the following methods:

(1) E-mail to FRA at: RRS.Correspondence@fra.dot.gov;

(2) Facsimile to FRA at: 202–493–6309; or

(3) Mail to FRA at: FRA Docket Clerk, Office of Chief Counsel, RCC–10, Mail Stop 10, 1200 New Jersey Ave. SE., Washington, DC 20590, facsimile no. 202–493–6068.

(g) *FRA Handling and Initial Review.* Upon receipt and initial review of a petition for waiver, to verify that it meets the criteria for use of these emergency procedures, FRA will add the petition to the ERD. The FeP numbers each document that is added to a docket. (For example, the first document submitted to the docket in 2009 will be identified as FRA–2009–XXX–1.) Thus, each petition submitted to the ERD will have a unique document number which should be identified on

all communications related to petitions contained in this docket. If FRA determines that the petition does not meet the criteria for use of these emergency procedures, FRA will notify the petitioner and will process the petition under normal waiver procedures of this subpart.

(h) *Comments.* Although the Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment, comments may be submitted. Comments should be submitted as soon as possible, after a petition is available on the FeP. Any comment received will be considered to the extent practicable. All comments should identify the appropriate ERD and should identify the specific document number of the petition designated by the FeP in the ERD. Interested parties commenting on a petition under this section should also include in their comments to the ERD telephone numbers at which their representatives may be reached. Interested parties may submit their comments using any of the following methods:

(1) E-mail to FRA at: RRS.Correspondence@fra.dot.gov.

(2) Facsimile to FRA at: 202-493-6309.

(3) Mail to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., Washington, DC 20590 or electronically via the internet at <http://www.regulations.gov>. Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the ERD.

(i) *Request for hearing.* Although the Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment, parties desiring a public hearing on any petition being processed under this section must notify FRA through the comment process identified in paragraph (h) of this section within 72 hours from the close of business on the day that the petition is entered into and available on the FeP. In response to a request for a public hearing, FRA may:

(1) Arrange a telephone conference between all interested parties to provide an opportunity for oral comment;

(2) Arrange a public hearing pursuant to the provisions contained in 49 CFR part 211; or

(3) Determine that a public hearing is unnecessary, inconsistent with safety, or not in the public interest.

(j) *Decisions.* FRA may grant a petition for waiver without prior notice and comment if the Administrator determines that it is in the public interest to grant the waiver; the waiver is not inconsistent with railroad safety; and the waiver is necessary to address an actual or impending emergency situation or emergency event. The Administrator will state in the decision issued under this section the reasons for granting the waiver.

(1) FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments otherwise received.

(2) FRA decision letters, either granting or denying a petition, will be posted in the appropriate ERD and will reference the document number of the petition to which it relates.

(3) A waiver under this section may be issued for a period of not more than 60 days and may be renewed upon application to the Administrator only after notice and an opportunity for a hearing on the waiver. The Administrator will immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this part.

(4) In granting a waiver under this section, the Administrator will consult and coordinate with other Federal agencies, as appropriate, for matters that may significantly impact such agencies.

[74 FR 23335, May 19, 2009]

Subpart D—Emergency Orders

§ 211.47 Review procedures.

(a) As specified in section 203, Public Law 91-458, 84 Stat. 972 (45 U.S.C. 432), opportunity for review of Emergency orders issued under that section will be provided in accordance with section 554 of title 5 of the U.S.C. Petitions for